

REMARKS

By this Amendment, Applicants have amended claim 24. Claims 24-47 are pending and under examination. For the reasons presented herein, Applicants traverse the rejections set forth in the Final Office Action, wherein the Examiner:

- (a) rejected claim 45 under 35 U.S.C. § 112, first paragraph, as allegedly lacking written description;
- (b) rejected claim 45 under 35 U.S.C. § 112, second paragraph, for indefiniteness;
- (c) rejected claims 24-31, 36, and 44-47 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Applic. Pub. No. 2004/0127224 ("Furukawa") in view of U.S. Patent No. 6,539,221 ("Vasudevan");
- (d) rejected claims 32-35, 37-39, 42, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Furukawa in view of Vasudevan, and in further view of U.S. Patent Applic. Pub. No. 2003/0087641 ("Gustafsson"); and
- (e) rejected claims 40 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Furukawa in view of Vasudevan, and further in view of U.S. Patent Applic. Pub. No. 2003/0123425 ("Walton").

Rejection of Claim 45 Under 35 U.S.C. § 112, First and Second Paragraphs

In each of the rejections of claim 45 under 35 U.S.C. § 112, first and second paragraphs, the Final Office Action alleged that there is no support for the claimed "computer readable medium" (claim 45). See Final Office Action, pp. 2-3. Applicants respectfully disagree. Applicants' disclosure at, for example, p. 13, line 14, recites "groups or modules of programs stored on disk and accessible on the network" (emphasis added), which adequately supports the claimed "computer readable medium." Claim 45 thus complies with 35 U.S.C. § 112, first and second paragraphs. Accordingly, Applicants request withdrawal of this rejection.

Rejection of Independent Claim 24 Under 35 U.S.C. § 103(a)

Applicants request reconsideration and withdrawal of the rejection of claim 24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Furukawa in view of Vasudevan. The Final Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

In particular, the Final Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because it has not interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

Independent claim 24 recites, in part:

optimising the initial solution by activating “inactive” sites and/or deactivating “active” sites, in order to minimise a predetermined cost function for the solution, wherein the predetermined cost function includes a term pointing out the presence of pilot pollution in the system, and wherein at least one of the “active” sites is deactivated based on the term pointing out the presence of pilot pollution . . .
(emphasis added).

Neither Furukawa nor Vasudevan, nor any of the other references cited in the Final Office Action, teach or suggest at least the above-quoted elements of independent claim 24. Moreover, Applicants note that although dependent claims 39 and 43 both contain recitations concerning pilot pollution, neither includes the above-quoted elements of claim 24.

When rejecting claims 39 and 43, the Final Office Action admitted that the cited prior art does not teach subject matter related to pilot pollution, but nevertheless alleged it would have been obvious to modify the references to overcome these deficiencies. See Final Office Action, pp. 13-16. Contrary to the allegations in the Final Office Action, and as clearly explained in Applicants' disclosure at, for example, p. 9, line 6 to p. 10, line 28, the phenomenon of pilot pollution is not mere "noise." See Final Office Action, p. 16. The recited features of independent claim 24, as quoted above, provide an example of the large differences between the claims and the cited prior art.

Thus, Furukawa and Vasudevan, whether taken alone or in combination, or in combination with any of the other references cited in the Final Office Action, does not result in the claimed invention, since neither Furukawa nor Vasudevan discloses or suggests at least the above-quoted elements of independent claim 24. The cited references do not render obvious claim 24, and the Final Office Action therefore has not properly ascertained the differences between the prior art and the claimed invention.

In view of the reasoning presented above, independent claim 24 is not obvious and should therefore be allowable over the cited references. Accordingly, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection.

Remaining Rejections under 35 U.S.C. § 103(a)

Applicants request reconsideration and withdrawal of the remaining rejections of claims 25-47 under 35 U.S.C. § 103(a) as being unpatentable over Furukawa in view of Vasudevan, and further in view of Gustafsson and/or Walton. Claims 25-47 depend either directly or indirectly from independent claim 24. As explained in the previous

section, Furukawa and Vasudevan, taken alone or in combination, fail to teach or suggest each and every recitation of claim 24.

In particular, regarding the dependent claims, the Final Office Action has not properly determined the scope and content of the prior art. Specifically, Furukawa, Vasudevan, Gustafsson, and Walton, whether taken alone or in any combination do not teach or suggest what the Final Office Action attributes to them. See M.P.E.P. § 2141(II). In addition, the Final Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because it has not interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

The Final Office Action applied Gustafsson and/or Walton against the dependent claims only, and Applicants note that these references do not cure the deficiencies of Furukawa in view of Vasudevan as applied to independent claim 24. Therefore, for at least the same reasons set forth in the previous section in connection with claim 24, the remaining rejections of dependent claims 25-47 are also legally deficient and should be withdrawn.

Dependent claims 25-47 are also allowable because they recite additional features not taught or suggested by Furukawa, Vasudevan, Gustafsson, and Walton, whether taken alone or in any combination. By way of nonlimiting examples, Applicants address some deficiencies in the rejections of the dependent claims:

- (1) Claim 25 recites “until a predefined processing time has elapsed.” Contrary to the allegations in the Final Office Action, the primary reference Furukawa does not teach or suggest this recitation, but instead teaches coverage ratios. See Final Office Action, pp. 5-6.

- (2) Claim 28 recites “relaxed constraints,” and a “relaxation threshold.” Contrary to the allegations in the Final Office Action, Furukawa does not teach or suggest relaxation thresholds at all. See Final Office Action, p. 7.
- (3) Claim 30 recites “wherein the initial solution comprises the cells belonging to a predefined list of compulsorily active cells and the cells deemed as ‘not able to be turned off’” In rejecting this claim, the Final Office Action cited to ¶ [0120] of Furukawa (See Final Office Action, pp. 7-8), which teaches “the base station D is deleted from the already-installed base station group” Furukawa, ¶ [0120]. However, this portion of Furukawa teaches removing cells, and not including “compulsorily active cells and cells deemed as ‘not able to be turned off’”
- (4) In rejecting claim 33, the Final Office Action alleged that Gustafsson at ¶ [0067] teaches “said solution is further enriched by the most adjacent cells in soft hand-over candidate to “capture” the load associated with cells deemed in the “able to be turned off” status and having one or more adjacent cells in soft hand-over, in the potential network configuration.” Final Office Action, pp. 10-11. Contrary to the allegations in the Final Office Action, ¶ [0067] of Gustafsson does not discuss soft hand over at all. In fact, four paragraphs later, Gustafsson begins a section entitled “Soft Handover Effects,” and in ¶ [0072] clearly states that “[i]n the analysis above soft HO [handover] effects have been disregarded” (emphasis added). Moreover, Gustafsson also teaches using soft handover in the link budget to compute demand. See Gustafsson, ¶ [0072]. This is completely different from the recitations of claim 33.
- (5) The rejections of claims 37-39 suffer from a similar deficiency regarding soft handover and Gustafsson (as just discussed in (4) for claim 33).
- (6) In rejecting claim 41, the Final Office Action did not address or point to any teaching in Walton of “a ‘restore’ procedure . . . *in which a random solution is built*” (emphasis added) in Walton. See Final Office Action, pp. 16-17 (emphasis added). Moreover, Walton does not teach these recitations.
- (7) In rejecting claim 43, the Final Office Action admitted that the cited prior art does not teach the entire claim body, but then alleged that the recitations of claim 43 would have been obvious. See Final Office Action, pp. 15-16. However, as discussed above regarding claim 24, the Final Office Action has not recognized that the phenomenon of pilot pollution is not mere “noise,” and this provides an example of the large differences between the claims and the cited prior art.

Thus, the cited prior art references, whether taken alone or in any combination, do not result in the claimed invention, since none of the references discloses or

suggests at least the previously-quoted elements of independent claim 24, or the additional elements of the dependent claims discussed in the above-noted examples. The cited references therefore do not render obvious dependent claims 25-47, and the Final Office Action therefore has not properly determined the scope and content of the prior art, nor properly ascertained the differences between the prior art and the claimed invention.

In view of the reasoning presented above, dependent claims 25-47 are not obvious and should therefore be allowable over the cited references. Accordingly, Applicants respectfully request reconsideration and withdrawal of the remaining 35 U.S.C. § 103(a) rejections.

Conclusion

Applicants respectfully request reconsideration and withdrawal of the rejections. Claims 24-47 are in condition for allowance, and Applicants request a favorable action.

The Final Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Final Office Action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

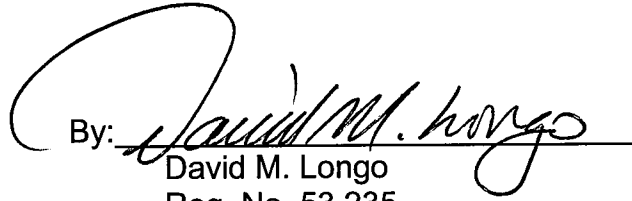
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 8, 2009

By:


David M. Longo
Reg. No. 53,235

/direct telephone: (571) 203-2763/